



Verizon Communications  
1300 I Street NW, Suite 400W  
Washington, DC 20005

December 4, 2001

**Ex Parte**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St., S.W. – Portals  
Washington, DC 20554

RE: Application by Verizon-New England Inc. for Authorization To Provide In-Region,  
InterLATA Services in State of Rhode Island, Docket No. 01-324

Dear Ms. Salas:

At the request of the CCB staff, attached is Rhode Island PUC's Report and Order regarding proposed Carrier-to-Carrier Performance Standards and Reports and performance Assurance Plan. Please let me know if you have any questions. The twenty-page limit does not apply as set forth in DA 01-2746.

Sincerely,

A handwritten signature in cursive script, appearing to read "Clint E. Odom".

Clint E. Odom

Attachment

cc: J. Veach  
J. Stanley  
G. Remondino

STATE OF RHODE ISLAND AND PROVIDENC PLANTATIONS  
PUBLIC UTILITIES COMMISSION

IN RE: VERIZON-RHODE ISLAND'S PROPOSED :  
CARRIER-TO-CARRIER PERFORMANCE : DOCKET NOS.  
STANDARDS AND REPORTS AND : 3195 & 3256  
PERFORMANCE ASSURANCE PLAN :  
FOR RHODE ISLAND :

REPORT AND ORDER

I. CARRIER-TO-CARRIER PERFORMANCE STANDARDS

On September 15, 2000, Verizon-Rhode Island ("Verizon") filed its proposed Carrier-to-Carrier Performance Standards and Reports ("C2C") for Rhode Island with the Public Utilities Commission ("Commission"). The purpose of C2C is to evaluate whether Verizon's wholesale service performance in Rhode Island is non-discriminatory as required by §252 of the Telecommunications Act of 1996 ("Act"). Verizon emphasized that the filing included the same C2C metrics as developed and adopted in New York, adopted in Massachusetts, and accepted by the FCC. Verizon also committed that any further changes made to the C2C in New York would be incorporated in Rhode Island's C2C.

On October 20, 2000, the Commission conducted a technical record conference on the C2C filing at 100 Orange Street, Providence, Rhode Island. The following parties participated: Verizon, the Division of Public Utilities and Carriers ("Division"), Cox Rhode Island Telcom, L.L.C. ("Cox"), Conversent Communications of Rhode Island ("Conversent"), and

AT&T.<sup>1</sup> In Docket No. 3179, the Price Regulation Successor Plan, Verizon agreed to file wholesale service quality standards.<sup>2</sup> At the technical conference, Verizon confirmed that once the New York Public Service Commission approves of changes in C2C, Verizon would file the changes with this Commission within 30 days.<sup>3</sup> Also, Conversant raised concerns regarding metrics relating to hot cuts.<sup>4</sup> In addition, Verizon discussed the importance of having uniformity in C2C metrics.<sup>5</sup> The Commission expressed concern that the C2C metrics developed in New York may not include metrics important to competitive local exchange carriers ("CLECs") in Rhode Island.<sup>6</sup>

On February 16, 2001, Verizon filed a revised C2C with the Commission to reflect recent C2C changes approved by the New York Public Service Commission. Verizon also indicated it would file C2C reports for Rhode Island beginning with the January 2001 reporting month. In response to these filings, various parties filed comments.

A. CONVERSENT

On December 28, 2000, Conversent filed a comment requesting that a "performance metric associated with high capacity loops" be included in the C2C to "insure that CLECs are able to obtain access to such loops on a commercially reasonable basis and at parity with the

---

<sup>1</sup> The following entities were parties in Docket No. 3195: Verizon, Division, Cox, Conversent, AT&T, WorldCom, and Sprint.

<sup>2</sup> Tr. 10/20/00, p. 98.

<sup>3</sup> Id., p. 12.

<sup>4</sup> Id., pp. 35-36.

<sup>5</sup> Id., p. 43.

intervals that Verizon provides itself.”<sup>7</sup> On March 12, 2001, Conversent filed a comment requesting a metric indicating the percentage of DS-1 loops completed within six days and that Verizon performance under this metric be deemed satisfactory if Verizon provides up to 9 DS-1 loops to CLECs within six days at least 95% of the time.<sup>8</sup> Conversent noted that Verizon’s proposed C2C metrics include PR-1-07, PR-1-08, PR-2-07, and PR-2-08, which measure the provisioning of DS-1 and DS-3 loops purely on a parity basis, while the provisioning of unbundled POTS or xDSL loops is measured using a specific number of days.<sup>9</sup> Conversent noted that Verizon’s wholesale tariff in Massachusetts (“Tariff 17”) specifies that DS-1 loops ordered in quantities of 9 or less will be provisioned within 6 days.<sup>10</sup> Lastly, Conversent noted that SBC’s C2C metrics include a specific standard interval for the provisioning of DS-1 loops.<sup>11</sup>

#### B. AT&T

On March 16, 2001, AT&T filed comments indicating support for the adoption of Verizon’s C2C with certain modifications. AT&T stated that the metrics for the installation of DS-1 loops and interoffice transport do not provide for a specific installation interval, and therefore, CLECs have no basis upon which to plan for installation.<sup>12</sup> As a result,

---

<sup>6</sup> Id., p. 93.

<sup>7</sup> Conversent’s filing dated 12/28/00, p. 2.

<sup>8</sup> Conversent’s filing dated 3/12/01, p. 2.

<sup>9</sup> Id.

<sup>10</sup> Id. Conversent also indicated that Verizon should be ordered to include this 6-day installation interval for DS-1 loops in R.I. PUC Tariff 18.

<sup>11</sup> Id., p. 3.

<sup>12</sup> AT&T’s comments dated 3/16/01, p. 3.

AT&T proposed a metric specifying a nine-day installation interval for DS-1 service.<sup>13</sup> AT&T also noted that the New York and Massachusetts Commissions are currently investigating Verizon's provision of special services such as DS-0, DS-1, DS-3 and OCX, and that after New York adopts special service metrics a technical session should be held to determine whether it would be appropriate to adopt similar metrics for special services in Rhode Island.<sup>14</sup> On June 26, 2001, AT&T notified the Commission that the New York Public Service Commission had recently adopted special services metrics and recommended that this Commission also do so in Docket No. 3195.<sup>15</sup>

#### C. COX

On August 6, 2001, Cox filed comments supporting the adoption of Verizon's C2C, but indicated that if Cox's proposed metrics relating to the accuracy of directory listing orders is adopted in Pennsylvania or Virginia, this metric should also be adopted in Rhode Island.<sup>16</sup> In general, Cox urged that Verizon be required to offer in Rhode Island the "best of the metrics that it has developed in any of its service territories."<sup>17</sup>

---

<sup>13</sup> Id., p. 3.

<sup>14</sup> Id., p. 3-4.

<sup>15</sup> AT&T's comments dated 6/26/01, p. 3.

<sup>16</sup> Cox's comments dated 8/16/01, p. 2

<sup>17</sup> Id., p. 2.

#### D. VERIZON

On March 30, 2001, Verizon submitted its reply comments. Verizon indicated that its C2C already included metrics for high capacity loops and interoffice facilities.<sup>18</sup> Verizon noted that it provides CLECs with a due date for the installation of high capacity loops through a Firm Order Confirmation within 72 hours of receiving a completed application, and that Verizon offers a six-day standard interval (plus up to 72 hours for a facility check and loop qualification) for DS-1 loops ordered in quantities of 9 or less where facilities are available.<sup>19</sup> In C2C, Verizon explained that parity is the standard applicable to DS-1 loops because “parity is used as the measure of performance” under the Telecommunications Act of 1996 (“Act”).<sup>20</sup> Verizon argued that to set an absolute performance standard regardless of the level of service Verizon provides its own retail operation would be requiring a level of service superior in quality than that Verizon’s provides to its own customers.<sup>21</sup> Verizon emphasized that the primary purpose of C2C is to monitor whether Verizon is meeting its nondiscriminatory obligation under the Act and, therefore, is designed to “measure parity in performance” and not as a “tool to secure higher quality of the telecommunications service

---

<sup>18</sup> Verizon’s reply comments dated 3/30/01, p. 2.

<sup>19</sup> Id., pp. 3-4, fn. 3.

<sup>20</sup> Id., p. 5.

<sup>21</sup> Id.

to CLECs than Verizon RI provides for itself.”<sup>22</sup> Lastly, Verizon stated that special service metrics should not be considered in this docket.<sup>23</sup>

## II. PERFORMANCE ASSURANCE PLAN

On December 21, 2000, Verizon filed a proposed Rhode Island Performance Assurance Plan (“PAP”) with the Commission. The Rhode Island PAP was submitted in connection with the Commission’s review of Verizon’s compliance with the Section 271 checklist of the Act in anticipation of Verizon’s filing for the FCC approval to enter the interLATA long distance market in Rhode Island. The PAP is a self-executing remedy plan designed to ensure that Verizon will continue to provide quality wholesale services to CLECs after Verizon has gained entry into the interLATA long distance market in Rhode Island.<sup>24</sup> The proposed PAP for Rhode Island is based on the PAP adopted in New York that the FCC found was an effective mechanism to ensure that local market will remain open to competition.

On June 8, 2001, Verizon filed a revised Rhode Island PAP for Commission review based on the PAP modifications ordered by the New York Public Service Commission and filed in New York on May 18, 2001 by Verizon in compliance with said order. These modifications include: establishment of a DSL Mode-of-Entry (“MOE”) category, a reallocation of dollars among the MOE and Critical Measures categories, requiring bill

---

<sup>22</sup> Id., p. 6.

<sup>23</sup> Id., p. 7.

<sup>24</sup> Verizon’s Ex. 1: PAP, p. 1.

credits for EDI Special Provisions, a change in the effective date of the PAP, and a revision in remedy dollars to reflect year 2000 ARMIS results. On August 30, 2001, Verizon filed a second revised Rhode Island PAP which included additional charts for small sample sizes, such as Table C-1-2 in Appendix C, for measures with absolute standards of 90%, 85% and 80%.

A. VERIZON'S RHODE ISLAND PAP

The proposed Rhode Island PAP requires Verizon to meet a specified level of wholesale performance, as determined by performance metrics, or be subject to financial penalties paid out as bill credits to CLEC's. The PAP has three major components: (1) the measures and standards used to evaluate performance; (2) the methodology used to determine penalties; and (3) financial liability.<sup>25</sup> For PAP's measures and standards, Verizon proposed inclusion of a subset of C2C metrics.<sup>26</sup> For the penalties methodology, Verizon segmented the PAP metrics into three categories: Mode of Entry ("MOE"), Critical Measures, and Special Provisions.

MOE metrics measure Verizon's overall performance to CLEC's on an industry-wide basis for each mode by which CLECs can enter the local exchange market -- resale, unbundled network elements ("UNEs"), interconnection trunks and DSL. Bill credits generated in any one of these MOE areas are allocated to CLECs purchasing those types of

---

<sup>25</sup> Id.

services.<sup>27</sup> Critical Measures, which is a subset of the metrics included in MOE, measure Verizon's performance on both a CLEC-specific and CLEC-aggregate basis in 12 areas considered to be the most important in providing quality wholesale service.<sup>28</sup> Special Provisions metrics measures key aspects of Verizon's performance such as: flow-through, order processing, hot-cuts, local service request confirmations and reject notices.<sup>29</sup> Bill credits will be given to CLECs that receive service below targeted levels. There is a separate Change Control Assurance Plan ("CCAP"), modeled on the New York plan, which measures Verizon's performance in implementing revisions to OSS interfaces and business rules that affect CLECs.<sup>30</sup>

To determine if parity exists between Verizon's wholesale and retail performance, a modified z-statistic is used. In MOE, each measure is graded 0, -1, -2 based on the statistical analysis and the magnitude of the z-statistic for the month. The performance score for each metric is weighted. Critical Measures performance is scored against sliding scales based on the statistical score and the magnitude of the difference between wholesale service and the applicable standards. Special Provisions are scored against absolute standards of performance.<sup>31</sup>

---

<sup>26</sup> Id.

<sup>27</sup> Id., p. 2.

<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> Id., pp. 2-3.

<sup>31</sup> Id., p. 3.

Verizon will report its PAP performance on a monthly basis and the plan would become effective the first full calendar month following Verizon's entry into the long distance market in Rhode Island.<sup>32</sup>

In regards to financial liability, the Rhode Island PAP has placed a total of \$20.375 million of Verizon's net income at risk annually to be allocated as follows: \$5.215 million to MOE, \$5.215 million to Doubling MOE, \$5.633 million to Critical Measures, and with respect to Special Provisions- \$0.695 million for UNE Flow Through, \$1.67 million for Hot Cut Performance, and \$1.252 million for EDI, and \$0.695 million for CCAP.<sup>33</sup> If Verizon's performance results in payments that reach the overall monetary cap, the Commission may investigate the service quality problem and take appropriate action.<sup>34</sup> The Commission also has the authority to reallocate the monthly distribution of bill credits among any provisions of the PAP and the CCAP upon 15 days notice prior to the beginning of the month in which the reallocation will occur.<sup>35</sup> Under the PAP, bill credits will appear on an eligible CLEC's bill two months after the close of the second month after the month under review.<sup>36</sup>

Verizon's PAP allows it to file exception or waiver petitions with the Commission seeking to have its monthly service quality results modified under three separate conditions: data clustering, unusual CLEC

---

<sup>32</sup> *Id.*, p. 3-4.

<sup>33</sup> *Id.*, p. 4.

<sup>34</sup> *Id.*, pp. 4-5.

<sup>35</sup> *Id.*, p. 8.

<sup>36</sup> *Id.*, p. 19

behavior, and emergency or catastrophe. The waiver process would not apply to those metrics where Verizon's wholesale performance is measured by a comparison to retail performance (i.e., parity metrics). The waiver petition must be filed within 45 days from the end of the month in which the event occurred, and the granting of the waiver is within the Commission's discretion.<sup>37</sup>

The PAP also allows for the review and audit of all aspects of the Rhode Island PAP each year to determine if any modifications need to be made. The PAP provides that any changes to the New York PAP adopted by the New York Public Service Commission will be filed with this Commission within 30 days of New York's approval.<sup>38</sup> However, unlike the New York and Massachusetts PAPs, Verizon did not include in its Rhode Island PAP provisions for auditing Verizon's data and reporting calculations for C2C metrics.

On July 20, 2001, a technical record conference on the Rhode Island PAP was held at the Commission's offices, 89 Jefferson Blvd., Warwick, Rhode Island. The following parties participated: Verizon, the Division, Cox, Conversent, AT&T and WorldCom.<sup>39</sup> At the technical conference, Verizon was asked to identify differences between the PAP it had proposed for Rhode Island, and the PAPs in New York and Massachusetts. Verizon acknowledged that its proposed Rhode Island

---

<sup>37</sup> *Id.*, pp. 21-22.

<sup>38</sup> *Id.*, pp. 23-24.

PAP only placed 36 percent of Verizon's year 2000 ARMIS results at risk, while the New York and Massachusetts PAPs had 39 percent at risk.<sup>40</sup> Verizon also admitted that the PAP adopted in Massachusetts had a different effective date than the PAP proposed in Rhode Island.<sup>41</sup> Also, the Massachusetts PAP implemented the UNE Flow-Through provisions one quarter prior to entry into the long-distance market, which differs from the proposed Rhode Island PAP.<sup>42</sup> The Rhode Island PAP requires that changes ordered to the New York PAP be filed with this Commission within 30 days instead of 10 days as provided in the Massachusetts PAP.<sup>43</sup>

Under questioning by the Commission, Verizon acknowledged that since the Rhode Island CLEC market is different from New York, the Commission has the authority to reallocate the weighting of metrics in MOE.<sup>44</sup> Verizon indicated that the hot cut metric (PR-9-01) has the most amount of money allocated to it under the PAP.<sup>45</sup> Verizon conceded that the Commission could require an independent auditor to perform metric validation.<sup>46</sup> Also, Verizon agreed that the Commission could open a

---

<sup>39</sup> The following entities were parties in Docket No.3256: Verizon, Division, Cox, Converse, AT&T, WorldCom, and Sprint.

<sup>40</sup> Tr. 7/20/01, pp. 8-9.

<sup>41</sup> Id., pp. 10-11.

<sup>42</sup> Id., p. 34.

<sup>43</sup> Id., p. 42.

<sup>44</sup> Id., pp. 50-52.

<sup>45</sup> Id., pp. 57.

<sup>46</sup> Id., p. 74.

docket to investigate and adopt special services guidelines as New York has done.<sup>47</sup>

At the technical conference, Conversent raised concerns relating to the provisioning of hot cuts within five days and the installing of DS-1 high capacity loops in a reasonable period of time.<sup>48</sup> Conversent also noted that Verizon has recently been rejecting orders for DS-1 loops due to lack of facilities.<sup>49</sup> Furthermore, Conversent was interested in adding billing accuracy metrics to the PAP.<sup>50</sup>

#### B. AT&T's PIP

On July 23, 2001, AT&T filed its proposed Performance Incentive Plan ("PIP") with the Commission. AT&T's PIP has two penalty tiers. Tier I provides for payments to CLECs for violations by Verizon of individual performance metrics in the amounts of \$1,548, \$4,030 or \$12,400, depending upon the extent of the violation.<sup>51</sup> Tier II provides for payments to a state fund for poor performance by Verizon to the entire CLEC industry as measured by aggregate data.<sup>52</sup> In determining whether Verizon's performance is compliant, AT&T proposed the use of a modified z-statistic, permutation analysis for small data sets, and the balancing critical value.<sup>53</sup> Under AT&T's PIP, if a measurement fails to achieve compliance for three consecutive months, it will be deemed a

---

<sup>47</sup> Id., p. 79.

<sup>48</sup> Id., pp. 60, 87-89.

<sup>49</sup> Id., pp. 89-90.

<sup>50</sup> Id., pp. 122-123.

<sup>51</sup> AT&T Ex. 1: PIP, pp. 5, 12.

<sup>52</sup> Id., pp. 5.

service failure and a penalty of \$12,400 per month will be assessed upon Verizon until the performance is again classified as compliant.<sup>54</sup> AT&T's PIP also included a provision that reduces the applicable Tier II penalty as Verizon's market share reduces.<sup>55</sup> AT&T's PIP also opposes placing an absolute dollar limit on the potential penalty payments due from Verizon for its poor performances.<sup>56</sup> Lastly, AT&T's PIP does not allow for preference or weighting of any particular mode of market entry or metrics.<sup>57</sup>

On July 30, 2001, a technical record conference on AT&T's PIP was held at the Commission's offices, 89 Jefferson Blvd., Warwick, Rhode Island. The following parties participated: Verizon, the Division, Cox, Conversent, AT&T and WorldCom. AT&T admitted that no state commission has adopted its PIP.<sup>58</sup> AT&T pointed out that Tier II payments go to a state fund instead of individual CLECs.<sup>59</sup> AT&T argued that its error balancing statistical methodology takes small sample sizes into account, but admitted this statistical methodology is not described in any standard statistical text.<sup>60</sup> AT&T acknowledged that in Kansas and Oklahoma, states with small sample sizes, the state Commissions adopted a statistical methodology requiring a 95% confidence level as in

---

<sup>53</sup> *Id.*, pp. 8-9.

<sup>54</sup> *Id.*, p. 16.

<sup>55</sup> *Id.*, p. 21.

<sup>56</sup> *Id.*, p. 22.

<sup>57</sup> *Id.*, p. 2.

<sup>58</sup> Tr. 7/30/01, pp. 13, 18.

<sup>59</sup> *Id.*, pp. 27-28.

<sup>60</sup> *Id.*, pp. 70, 72.

Verizon's PAP.<sup>61</sup> Also, AT&T admitted that in uncontrolled experiments, such as in testing for telecommunications metrics, there is no standard confidence level.<sup>62</sup> Under AT&T's PIP methodology, the confidence level would decrease as the sample size decreased.<sup>63</sup> Finally, AT&T's PIP would include every metric in the C2C metrics for Rhode Island.<sup>64</sup>

### C. COMMENTS

The parties filed comments and reply comments on Verizon's PAP and AT&T's PIP.

#### 1. VERIZON

Verizon emphasized that its PAP has been examined and approved by the FCC, while AT&T's PIP has not been adopted by any state.<sup>65</sup> Furthermore, Verizon noted that AT&T has withdrawn its PIP in Virginia and instead proposed that Verizon's New York model PAP be adopted by the Virginia Commission because it has been "battle tested" and it avoids "reinventing complex statistical models."<sup>66</sup> Verizon asserted that AT&T's PIP included remedy amounts that are grossly excessive and its error balancing methodology is not an accepted practice in the academic arena.<sup>67</sup>

---

<sup>61</sup> Id., pp. 86-87.

<sup>62</sup> Id., pp. 89-90.

<sup>63</sup> Id., p. 93.

<sup>64</sup> Id., pp., 93-94.

<sup>65</sup> Verizon's comments dated 8/17/01, p. 1.

<sup>66</sup> Id., pp. 1-2.

## 2. AT&T

AT&T argued that its PIP would deter Verizon from engaging in anti-competitive behavior and that the PIP's two-tier penalty approach is appropriate.<sup>68</sup> AT&T emphasized that its PIP allows for additional payments by Verizon for chronic failure to provide compliant service to CLECs.<sup>69</sup> Also, AT&T indicated its PIP does not allow Verizon to avoid liability for poor performance through financial penalty caps or offsetting credits.<sup>70</sup>

In the event that the Commission were not to adopt its PIP, however, AT&T proposed that certain modifications to Verizon's PAP be adopted. AT&T recommended that the dollars at risk in Verizon's PAP be increased to 39% of the company's total net return, and that internal caps in Verizon's PAP not operate to preclude the payment of remedies to CLECs.<sup>71</sup> In addition, AT&T urged that Verizon's PAP be required to include remedies for all sample sizes and to provide for metrics replication testing.<sup>72</sup> Lastly, AT&T stated the PAP should grant the Commission the authority to select and direct an audit of Verizon and that the PAP not be exclusive of other legal or equitable remedies available to a CLEC under an interconnection agreement or tariff.<sup>73</sup>

---

<sup>67</sup> Id., pp. 8, 11.

<sup>68</sup> AT&T's comments dated 8/17/01, pp. 7-9.

<sup>69</sup> Id., p. 11.

<sup>70</sup> Id., p. 14.

<sup>71</sup> Id., p. 17-18.

<sup>72</sup> Id., p. 18.

### 3. COX

Cox noted that the remedies in Verizon's Rhode Island PAP are not reflective of the market in Rhode Island, because the MOE remedy allocates 13.3% to LNP (trunks), while the Rhode Island market actually has 44.9% in the LNP (trunks) MOE.<sup>74</sup> As a result, Cox stated, Verizon should adjust its PAP so that the remedies are more accurately distributed based on the actual Rhode Island market.<sup>75</sup> Cox also suggested that the Commission adopt the best aspects of other PAPs in Verizon's service territory and that the Commission include remedies related to performance on special services metrics.<sup>76</sup>

### 4. CONVERSENT

Conversent also recommended that the dollars-at-risk in Verizon's Rhode Island PAP be increased from 36% to 39% of its net revenues and that these additional revenues be earmarked to the additional metrics advocated by Conversent.<sup>77</sup> First, Conversent sought to add a metric in the Rhode Island PAP that would measure percentage of hot cuts completed within 5 days and that have a 95% standard for completion within five days.<sup>78</sup> Second, Conversent recommended adding to the Rhode Island PAP two billing metrics under consideration in New York: (1) percentage of acknowledgements of claims (for overcharges) within 48

---

<sup>73</sup> Id., p. 19.

<sup>74</sup> Cox's comments dated 8/16/01, p. 1.

<sup>75</sup> Id., pp. 1-2.

<sup>76</sup> Id., p. 2.

<sup>77</sup> Conversent's comments dated 8/17/01, p. 1.

<sup>78</sup> Id., p. 3.

hours; and (2) percentage of responses to claims (for overcharges) with a solution within 30 days.<sup>79</sup> Third, Conversent urged the adoption of metrics in the Rhode Island PAP that would require installation of DS-1 and DS-3 loops ordered in quantities of 9 or less within 9 days where facilities are available. Conversent noted that under Verizon's Massachusetts Tariff 17, Verizon must install DS-1 loops within 6 days where facilities are available.<sup>80</sup> When there are no facilities available, Conversent recommended the adoption of metrics that would indicate the percentage of DS-1 and DS-3 loops rejected for lack of facilities by central office to determine if there is a parity between Verizon and CLECs.<sup>81</sup>

## 5. WORLD COM

WorldCom similarly advocated that the dollars at risk in Verizon's Rhode Island PAP be increased from 36% to 39% of Verizon's net local return.<sup>82</sup> In addition, WorldCom advocated that the Commission adopt and apply the Individual Rule, which is used for Critical Measures, to all metrics in the MOE. WorldCom also urged the elimination of minimum-X statistical scoring, and the use of 5 data points per month as the minimum sample size necessary for a performance measure analysis.<sup>83</sup> Also, WorldCom proposed that penalties be imposed on Verizon if it failed

---

<sup>79</sup> Id., p. 4.

<sup>80</sup> Id., p. 5-7.

<sup>81</sup> Id., pp. 6-7.

<sup>82</sup> WorldCom's comments 8/17/01, p. 2-3.

<sup>83</sup> Id., pp. 3-4.

to implement any new metrics on a timely basis.<sup>84</sup> If in the future an auditor failed to replicate reports because of metric change control notice failures or missing data, WorldCom proposed that remedies be paid to CLECs.<sup>85</sup> Lastly, WorldCom recommended that Verizon pay PAP penalties to CLECs by check instead of bill credits.<sup>86</sup>

## 6. DIVISION

The Division recommended that Verizon's PAP for Rhode Island be adopted with three modifications. First, the PAP's cap on penalty liability should be increased from 36% to 39% of Verizon-Rhode Island's net revenues. Second, the PAP should be implemented immediately instead of waiting until after Verizon's entry into the interLATA market for Rhode Island. Third, Verizon should pay any penalties to CLECs by check or ensure that the billing credits provided to CLECs under the PAP are auditable and verifiable.<sup>87</sup>

## D. REPLY COMMENTS

### 1. VERIZON

Verizon objected to the Division's recommendation that the PAP be made effective immediately, maintaining that the PAP should become effective only upon FCC approval of Verizon's Section 271 application for Rhode Island. Verizon argued that the PAP is a voluntary filing made by Verizon in connection with its Section 271 application to ensure that

---

<sup>84</sup> Id., pp. 4-5, 8.

<sup>85</sup> Id., p. 6.

<sup>86</sup> Id., p. 7.

Verizon provides quality service to CLECs, and that the Commission has no legal authority to impose wholesale performance remedies on Verizon.<sup>88</sup> However, Verizon acknowledged that in the Massachusetts PAP, the Special Provisions-UNE Flow-Through metric was implemented for the three-month period immediately proceeding Section 271 approval.<sup>89</sup> Also, Verizon contended that placing 36% of its net return at risk is an adequate incentive and there is no reason to increase the amount to 39%.<sup>90</sup> Lastly, Verizon opposed issuing checks for payment of PAP penalties to CLEC's because bill credits are more efficient for Verizon to administer and payments by check would unjustly enrich CLECs that have accounts with outstanding balances owed to Verizon. Verizon also noted that in New York, CLECs are provided with invoices that identify the PAP penalties as a separate line item, and that Verizon is in the process of revising its billing system in New England to provide the same information.<sup>91</sup>

In response to Conversent's recommendations, Verizon indicated that PR-9-01 already encompasses the metric for hot cuts completed in five days.<sup>92</sup> As for Conversent's proposed billing metrics, Verizon stated that these metrics have been made available on a trial basis in New York and that detailed business rules have not yet been developed. As a

---

<sup>87</sup> Division's comments dated 8/30/01.

<sup>88</sup> Verizon's Reply Comments dated 9/7/01, pp. 2-3, fn. 2

<sup>89</sup> *Id.*, p. 3, fn. 3.

<sup>90</sup> *Id.*, p. 4.

<sup>91</sup> *Id.*, pp. 5-6.

<sup>92</sup> *Id.*, pp. 7-8.

result, Verizon suggested that the Commission should not prematurely adopt these billing metrics.<sup>93</sup> Lastly, Verizon urged the Commission to reject Conversent's proposed metrics setting absolute standards for the installation of DS-1 and DS-3 loops because the Act only requires parity and Verizon had informed the CLECs of its policy for installing high capacity loops in "no-facilities available" situations and this policy was not a recent change.<sup>94</sup>

In response to Cox's recommendation, Verizon indicated that a metric for accuracy of directory listings has been proposed but not yet approved in Pennsylvania or Virginia. Also, Verizon objected to being required to monitor and file with the Rhode Island Commission every metric that is proposed and adopted in any state in which Verizon does business.<sup>95</sup>

In response to WorldCom's recommendations, Verizon argued that applying the Individual Rule used for Critical Measures to all metrics in MOE would be a fundamental change to the New York-style PAP.<sup>96</sup> In addition, Verizon opposed elimination of minimum -X statistical scoring for MOE because it would unfairly increase the likelihood that a Type I error would occur and Verizon would pay penalties for poor performance, even though Verizon was, in fact, compliant. Verizon also responded that the Rhode Island PAP properly measures all sample sizes,

---

<sup>93</sup> Id., pp. 8-9.

<sup>94</sup> Id., pp. 9-10.

<sup>95</sup> Id., pp. 10-11.

including sample sizes of 1.<sup>97</sup> Also, Verizon explained that the development of metrics is complicated and that it does not unduly delay implementation of new metrics. Lastly, Verizon noted that KPMG Consulting has found that Verizon's change control process functions successfully.<sup>98</sup>

## 2. AT&T

At the outset, AT&T stated that Verizon's criticism of AT&T's PIP is unfounded. In particular, AT&T stated that its PIP, unlike the PAP, uses an error balancing methodology which properly accounts for Type II errors that negatively affect CLECs.<sup>99</sup> AT&T also criticized Verizon's PAP for having internal caps on penalty amounts which make it virtually impossible for the overall PAP cap of 36% to be reached. For example, AT&T noted that Special Provisions has a relatively small internal cap of \$300,000 per month.<sup>100</sup>

## 3. COX

Cox concurred that the dollars-at-risk under the PAP should be increased from 36% to 39%. Also, Cox concurred that PAP penalties should be paid to CLECs by checks instead of bill credits. Lastly, Cox recommended that a directory listing metric be added to the Rhode Island C2C metrics and included in the Rhode Island PAP.<sup>101</sup>

---

<sup>96</sup> Id., pp. 13-14.

<sup>97</sup> Id., pp. 14-15.

<sup>98</sup> Id., p. 15.

<sup>99</sup> AT&T's Reply Comments dated 9/7/01, p. 3.

<sup>100</sup> Id., pp. 5-6.

<sup>101</sup> Cox's Reply Comments dated 9/6/01.

#### 4. DIVISION

Following its review of the Reply Comments filed by Verizon, AT&T, Conversent, WoldCom and Cox, the Division filed a Report with the Commission on September 24, 2001. In its Report, the Division concurred with Verizon's criticism of AT&T's PIP, and urged the Commission to reject AT&T's PIP. In regards to AT&T, the Division concurred that the dollars-at-risk in the PAP should be increased from 36% to 39% of Verizon-Rhode Island's net revenues, but recommended rejection of AT&T's proposals to include audits and metrics replication in the PAP and to eliminate internal caps on penalty amounts.<sup>102</sup> As for Conversent, the Division agreed with Verizon that the existing PR-9-01 metric fully encompasses all hot cuts. Also, the Division recommended that the Commission hold Verizon to its commitment to accurately incorporate any new metrics adopted in New York (including new billing metrics) into the Rhode Island PAP. Furthermore, the Division recommended rejection of the additional metrics proposed by Conversent for high capacity loops because they would impose an absolute standard when only a parity standard is required.<sup>103</sup> As to WorldCom's recommendations, the Division rejected these proposals because it would cause the Rhode Island PAP to be substantially different from the New York PAP. The Division found merit in the concept that metrics be

---

<sup>102</sup> Division's Report filed 9/24/01, pp. 1-2.

<sup>103</sup> Id., pp. 3-4.

standardized among the Verizon states.<sup>104</sup> In regards to Cox, the Division recommended rejection of Cox's proposal that the Commission adopt the best aspects of PAPs developed throughout Verizon's service territory because the "best aspects" concept is too vague and unduly burdensome. In addition, the Division recommended that the Commission reject Cox's proposal to redistribute Verizon's liability under the Rhode Island PAP to reflect current market conditions, and instead favored maintaining the MOE's emphasis (60%) on the UNE-based mode of entry. In conclusion, the Division reiterated its recommendations that the Commission adopt Verizon's proposed PAP for Rhode Island, as modified in accordance with the Division's August 30, 2001 comments.

To address concerns raised about the PAP's statistical methodology, the Division submitted the pre-filed testimony of Gene Laber, Ph.D, a consultant with an economics background. Dr. Laber explained that, in the context of statistical testing, a "Type I" error has occurred when Verizon is viewed as not having provided adequate service when in fact it did, while a "Type II" error has occurred when Verizon is viewed as having provided adequate service when in fact it did not.<sup>105</sup> Dr. Laber found that in using a 95% confidence level for its parity tests (corresponding to a Type I error 5% of the time), the PAP's methodology appropriately balances the risks between Type I and Type II errors, while the PIP's methodology appears vague and is not grounded in standard

---

<sup>104</sup> Id., p. 4.

statistical methods.<sup>106</sup> In regards to small sample sizes, Dr. Laber indicated that the PAP's tests in this area are commonly used and appear to be reasonable.<sup>107</sup>

#### E. HEARING

After public notice, the Commission held a hearing in Docket Nos. 3195 and 3256 at its offices, 89 Jefferson Boulevard, Warwick, Rhode Island, on October 3, 2001. The following appearances were entered:

FOR VERIZON:	Bruce P. Beausejour, Esq.
FOR DIVISION:	Leo Wold, Esq. Special Assistant Attorney General
FOR CONVERSENT:	Scott Sawyer, Esq.
FOR COX:	Patricia French, Esq.
FOR COMMISSION:	Steve Frias, Esq. Executive Counsel

Verizon presented Ms. Julie Canny, Verizon's Executive Director for Wholesale Performance Assurance, as its witness. Ms. Canny asserted that 36 percent of net income was an adequate amount of money to place at risk for the Rhode Island PAP, but recognized that this Commission may require Verizon to place 39 percent of its net income at risk as did the Massachusetts Commission.<sup>108</sup> Also, Ms. Canny indicated that Verizon preferred 30 days instead of 10 days to make a compliance

---

<sup>105</sup> Id., Appendix A.

<sup>106</sup> Id.

<sup>107</sup> Id.

<sup>108</sup> Tr. 10/3/01, pp. 15-16.

filing with this Commission of any modifications adopted to the New York or Massachusetts PAPs, but understood this Commission would desire the same treatment as Massachusetts.<sup>109</sup>

As for including metric testing in this Commission's audit of the PAP, Ms. Canny indicated Verizon could accept this proposal, but hoped the Commission would conduct any metric testing at the same time the Massachusetts D.T.E. performed its metric testing.<sup>110</sup> Also, Ms. Canny stated that Verizon did not object to a requirement that Verizon file with this Commission any new metrics adopted by any state commission within the Verizon service territory.<sup>111</sup>

As to granting the Commission flexibility to reallocate the MOE weights to emphasize the trunks mode of entry, Ms. Canny stated "the Commission has the ability to move money between the mode of entries or change weights on measures or modify measures."<sup>112</sup> Also, Ms. Canny preferred that the Commission not implement the UNE Flow Through Special Provision three months prior to Verizon's entry into the long distance market, but recognized that the Massachusetts D.T.E. had done so and that this Commission could do so as well.<sup>113</sup> In regards to billing metrics, Ms. Canny explained that both Pennsylvania and New York have billing metrics under development. Ms. Canny stated this Commission

---

<sup>109</sup> Id., pp. 16-17.

<sup>110</sup> Id., pp. 17-18.

<sup>111</sup> Id., pp. 18-19.

<sup>112</sup> Id., p. 20.

<sup>113</sup> Id., pp. 20-21.

could add these metrics to the C2C metrics or the Rhode Island PAP, however, she preferred that the Commission utilize the Pennsylvania billing metrics.<sup>114</sup> Furthermore, Ms. Canny acknowledged that the PAP is not an exclusive remedy for CLECs, and that CLECs also have the right to seek remedies under Rhode Island tariffs and interconnection agreements.<sup>115</sup>

As to issuing checks instead of bill credits for PAP penalties, Ms. Canny indicated that New York's billing system provides for bill credits to be auditable and verifiable, but this process has not been established in Massachusetts. Therefore, she acknowledged, the Commission could require Verizon to issue checks until the appropriate billing system is implemented in New England.<sup>116</sup>

With respect to Verizon's performance in June 2001, Ms. Canny noted that the MOE metrics "missed" by Verizon would not result in penalty payments under the Rhode Island PAP because the MOE statistical methodology looks at metric performance as a whole instead of on a metric-by-metric basis.<sup>117</sup> Ms. Canny admitted that Verizon has never made any PAP penalty payments out of the allocation for Doubling MOE.<sup>118</sup> Also, Ms. Canny indicated it was feasible for the Commission to reduce the amount of funds allocated to MOE in order to use these funds

---

<sup>114</sup> *Id.*, p. 24.

<sup>115</sup> *Id.*, p. 26.

<sup>116</sup> *Id.*, pp. 27-28.

<sup>117</sup> *Id.*, pp. 34, 36-41.

<sup>118</sup> *Id.*, p. 53.

to create another group of Critical Measures consisting of metrics in MOE that are not presently included in Critical Measures.<sup>119</sup> Furthermore, Ms. Canny admitted it was feasible for the Commission to create doubling penalty provisions in Critical Measures for consistently poor performance over three months and that the funds to pay these additional penalties could be obtained from the Doubling MOE allocation.<sup>120</sup>

Verizon stated it had recently filed a proposed tariff in Rhode Island requiring the installation of DS-1 high capacity loops within nine days, but was uncertain as to whether it could provide detailed information to the Commission as to when Verizon installs a DS-1 loop and when it does not due to lack of facilities.<sup>121</sup> Verizon also had no objection to the Commission opening a separate docket to investigate special services and would comply with any Commission order imposing reporting requirements for special services similar to those in adopted New York.<sup>122</sup> Ms. Canny also recognized that the Commission may desire to change the start date for the Rhode Island PAP to the beginning of the month in which Verizon receives FCC approval to enter the long distance market, as the Massachusetts D.T.E ordered.<sup>123</sup>

---

<sup>119</sup> Id., p. 55.

<sup>120</sup> Id., pp. 58, 62-63.

<sup>121</sup> Id., pp. 63, 65-67.

<sup>122</sup> Id., pp. 67-69.

<sup>123</sup> Id., p. 79.

During the hearing, Conversent withdrew its request that a separate metric be created for hot cuts performed within five days, having accepted Verizon's position that PR 9-01 already encompasses this measure.<sup>124</sup> However, Conversent continued to press for the addition of reporting requirement on Verizon to indicate when it provisions DS-1 high capacity loops for CLECs and itself.<sup>125</sup>

Under cross-examination by the Division, Ms. Canny indicated Verizon would object to immediate implementation of the Rhode Island PAP because the purpose of the PAP is to prevent backsliding by Verizon in the quality of its wholesale service after its entry into the long distance market.<sup>126</sup> Under further cross-examination by the Commission, Ms. Canny explained how Verizon determines metric compliance when there is a small sample size using permutation testing for parity measures and a table for samples size of 20 or below for absolute benchmarks.<sup>127</sup>

On behalf of the Division, Mr. Weiss testified that, while he supported making the Rhode Island PAP effective immediately, he was not familiar with any state that approved a PAP independent of the Section 271 process.<sup>128</sup> Mr. Weiss recommended the Commission adopt the Verizon PAP instead of the AT&T's PIP because the PAP is more

---

<sup>124</sup> *Id.*, p. 89.

<sup>125</sup> *Id.*, pp. 95-96.

<sup>126</sup> *Id.*, pp. 109-110.

<sup>127</sup> *Id.*, pp. 139-141.

<sup>128</sup> *Id.*, p. 167.

narrowly focused on important metrics and the PAP does not have payments going to a state-administered fund.<sup>129</sup>

## F. POST-HEARING BRIEFS

### 1. VERIZON

In its post-hearing brief, Verizon argued that nowhere in the Act did Congress delegate to state Commissions either specific authority to impose financial penalties on Bell Operating Companies (“BOCs”) like Verizon to prevent or cure backsliding, or general authority to take any steps deemed appropriate by a state Commission to accomplish the goals of the Act. Also, Verizon noted that in the Act, Congress expressly gave the FCC power to impose enforcement penalties to cure backsliding without also giving this power to the state Commissions.<sup>130</sup> Verizon also argued that this Commission’s authority is limited under state law in that we do not have the authority to enforce penalties under R.I.G.L. § 39-1-3, 39-1-7(a). Rather, Verizon emphasized, only the Division can order remedial relief such as refunds for discriminatory conduct by Verizon under R.I.G.L. § 39-3-13.1.<sup>131</sup> Thus, Verizon concluded, the Commission does not have the authority under either federal or state law to unilaterally impose a PAP on Verizon prior to its receipt of 271 approval from the FCC.

### 2. COX

---

<sup>129</sup> Id., pp. 181-182.

<sup>130</sup> Verizon’s Post-Hearing Brief, pp. 3-4.

<sup>131</sup> Id., pp. 5-6.

In its post-hearing brief, Cox indicated that the issue of whether the Commission has the legal authority to impose a PAP on Verizon is not ripe and should only be entertained if Verizon RI's 271 application is denied by the FCC. However, Cox asserted the Commission has ample authority under R.I.G.L. § 39-1-1 and 39-1-38 to adopt a PAP.<sup>132</sup> Cox also argued that any metrics adopted or proposed in other Verizon jurisdictions be filed for consideration with this Commission. In addition, Cox supported inserting a "placeholder" in the Rhode Island PAP for the addition of a directory listing metric in the event this metric is adopted in another state in Verizon's service territory.<sup>133</sup> Also, Cox suggested that the parties remain free to petition the Commission for the adoption of additional metrics in the Rhode Island PAP to address any specific problems that may subsequently arise in the Rhode Island market.<sup>134</sup> Cox also requested that the Commission reallocate the percentages at risk in the MOE in favor of facilities-based competition (i.e. the trunking MOE), in order to more closely reflect the existing RI market. Lastly, Cox recommended that the dollars-at-risk in the Rhode Island PAP be increased from 36% to 39% of total company net revenue and that checks instead of bill credits be used for PAP penalty payments to CLECs.<sup>135</sup>

---

<sup>132</sup> Cox's Post-Hearing Brief, pp. 3-4.

<sup>133</sup> *Id.*, pp. 6-7.

<sup>134</sup> *Id.*, pp. 5-6.

### 3. CONVERSENT

In its post-hearing brief, Conversent confirmed that it had withdrawn its request for a metric for hot cuts. Also, Conversent withdrew its request for new DS-1 loops metrics because of Verizon's willingness to allow CLECs to convert special access facilities into DS-1 UNE loops. Conversent reserved its rights to revisit this issue if problems arise. Lastly, Conversent recommended adoption of billing metrics being developed in Pennsylvania for inclusion in the Rhode Island PAP.<sup>136</sup>

### 4. AT&T

In its post-hearing brief, AT&T argued that pursuant to R.I.G.L. § 39-1-1 the Commission has the authority to provide "remedies" to prevent "unfair" or "destructive competitive practices" for intrastate communication. In addition, AT&T noted that R.I.G.L. § 39-1-38 allows for the provisions of Title 39 to be construed liberally. Therefore, AT&T concluded that the Commission has the ability to adopt a PAP and is not limited to considering only a plan to which Verizon agrees.<sup>137</sup>

### 5. DIVISION

In its post-hearing brief, the Division argued that federal law, specifically the Act, is silent regarding a state Commission's authority to

---

<sup>135</sup> *Id.*, pp. 9-10.

<sup>136</sup> Conversent's Post-Hearing Brief.

<sup>137</sup> AT&T's Post-Hearing Brief, pp. 2-4.

implement a PAP prior to the FCC's section 271 approval.<sup>138</sup> The Division stated that the Commission has authority under state law to require a utility to provide adequate telecommunication service pursuant to R.I.G.L. § 39-1-1, 39-2-1, 39-3-7, and 39-1-38.<sup>139</sup> Specifically, the Division noted that the Commission has regulated the adequacy of telecommunications services provided by Verizon in the Price Regulation Successor Plan ("PRSP"), and compared the Service Quality Adjustment Factor ("SQAF") of the PRSP to PAP.<sup>140</sup> Lastly, the Division argued that the Commission is not preempted by federal law from implementing a PAP prior to Section 271 approval because a PAP would deal exclusively with local intrastate telecommunications over which the Commission retains jurisdiction.<sup>141</sup>

## COMMISSION FINDINGS

### I. PAP

#### A. The Standard

Although a performance monitoring and enforcement mechanism is not a condition of Section 271 approval, the FCC has declared that performance monitoring and enforcement mechanisms constitute evidence that the BOC will meet its Section 271 obligation and preserve its checklist compliance.<sup>142</sup> The FCC recognized that performance

---

<sup>138</sup> Division's Post-Hearing Brief, pp. 1-2.

<sup>139</sup> *Id.*, pp. 2-3.

<sup>140</sup> *Id.*, pp. 3-4.

<sup>141</sup> *Id.*, pp. 4-5.

<sup>142</sup> FCC's Bell Atlantic-New York Order, at para. 429.

monitoring and enforcement plans may vary by state, but a plan should have: a potential liability that provides a significant incentive to comply with performance standards, clear performance standards, the ability to detect and sanction poor performance, a self-executing enforcement mechanism to prevent backsliding, the assurance that the reported data is accurate, and state commission flexibility to monitor and redesign the plan.<sup>143</sup>

#### B. A Comparison of PAP and PIP

In an effort to comply with the FCC's directive, Verizon filed its New York model PAP and AT&T filed its PIP for this Commission to consider. The Commission finds the New York model PAP to be superior to AT&T's PIP. Under the PAP, all payments are made to CLECs, whereas under the PIP, some payments would go to a state fund under the so-called "Tier II" penalty approach. We find that the most appropriate policy is for any and all payments under a performance plan to go directly to the CLECs who are harmed. We note that no CLEC other than AT&T supported the Tier II approach. This is not surprising, since a CLEC interested in competing in Rhode Island would likely want to receive any performance penalties available to it. Only a CLEC not interested in competing in Rhode Island, but interested in having Verizon lose funds, could support AT&T's Tier II approach.

---

<sup>143</sup> Id., para. 433.

In addition, AT&T's PIP does not allow for the Commission to weight certain metrics more than others. Yet, we find that the most appropriate approach is to permit metrics to be weighted differently based on their importance. Thus, for example, because of its importance to local competition, the Special Provisions metric for UNE Flow-Through has a higher monetary penalty than any specific metrics in the MOE or Critical Measures categories.

The Commission recognizes there is a benefit to achieving uniformity throughout the Verizon service territory in regards to performance monitoring and enforcement plans. Uniformity assists Verizon, CLECs and regulators in sharing a common level of understanding and developing appropriate policies. Verizon's New York-model PAP has been adopted in other Verizon states; the PIP has not. Furthermore, the Commission notes that AT&T recently withdrew its PIP in Virginia, and instead acknowledged the benefits of adopting a NY-style remedy plan that is already being implemented in another state.

### C. Modifications to the PAP to Achieve Uniformity

In furtherance of the principle of uniformity, the Commission went to great effort ensure that to the best aspects of the New York and Massachusetts' PAPs were included in Rhode Island's PAP. The difference between the proposed Rhode Island PAP and the PAPs in effect in New York and Massachusetts revolved around four issues: the

appropriate percentage of Verizon's income to place at risk, the appropriate start date, audit rights, and the timeliness of modifications.

As to the appropriate percentage of income at risk, there is no reason why Verizon-Rhode Island should enjoy a smaller percentage of net income at risk than Verizon in New York or Massachusetts. For a state Commission to accept a lower percentage at risk than what has been ordered in another state within Verizon's service territory would be tantamount to accepting second class status. Therefore, the Commission finds that placing 39% of Verizon's yearly net income at risk is the appropriate level of funding for Rhode Island's PAP.

As to the appropriate start date of the PAP, the Commission recognizes that the PAP filed by Verizon is designed to prevent backsliding in its wholesale performance after Verizon-RI receives Section 271 approval. Assuming that Verizon-RI will shortly receive Section 271 approval from the FCC, and the UNE Flow Through-Special Provisions of the PAP will, in fact, have an effective start date 3 months prior to 271 approval, it is not necessary for us to address the issue of immediate implementation of the PAP at this time. Rather, we agree with Cox that this issue would become ripe for our consideration only in the event the FCC were to deny Verizon-RI's 271 application. Nevertheless, the Commission emphasizes to Verizon that the Commission has ample authority under state law to require Verizon to provide adequate services relating to telecommunications. In the future, the Commission will not

hesitate to order modifications to the Rhode Island PAP that are reasonable to insure adequate wholesale performance, regardless of whether Verizon volunteers to accept the ordered modifications.

Accordingly, the Commission hereby orders the start date of the Rhode Island PAP to be the first day of the month in which Verizon receives Section 271 approval for Rhode Island from the FCC. In addition, the Commission will require, as did the New York and Massachusetts state Commissions, that the UNE Flow-Through Special Provisions be implemented one full quarter prior to the month in which Verizon receives Section 271 approval from the FCC. This will make it likely that CLECs will begin receiving PAP payments during the same month in which Verizon's enters the long distance market in Rhode Island. In sum, the Commission could find no persuasive rationale not to require the same implementation schedule for the Rhode Island PAP as the New York and Massachusetts' state Commissions ordered for their PAPs.

In regard to the audit provision of the PAP, while Commission understands Verizon's concern that numerous state commissions performing audits of Verizon's metrics and data validation throughout the year could be administratively burdensome for Verizon, the Commission would not be properly monitoring the PAP if the Commission did not have the power to select an auditor to perform metric and data validation testing at the expense of Verizon. The Commission is also

aware that the metrics for Rhode Island are virtually identical to those of Massachusetts and that the Massachusetts D.T.E. can exercise its authority to perform an audit of the Massachusetts metrics should the need arise. However, Verizon must be cognizant that this state Commission can not be wholly dependent and rely upon another state Commission in order to properly protect the ratepayers of Rhode Island. Accordingly, the Commission hereby asserts its authority under the Rhode Island PAP to select an auditor to perform metrics testing and data validation with respect to Verizon-Rhode Island. To avoid the prospect of Verizon being in a state of perpetual audit, this Commission will endeavor to utilize the auditor selected by the Massachusetts D.T.E. and if possible, will time the Rhode Island audit to coincide with the metrics audit performed by the Massachusetts D.T.E.

As to the timeliness of modifications to the Rhode Island PAP, the Commission obviously desires the potential benefits of modifications ordered to the PAPs in either New York or Massachusetts to be made available in Rhode Island as soon as possible. Accordingly, Verizon shall file any such modifications with this Commission be filed within 10 days. A similar to a provision already exists in the Massachusetts PAP. Within ten days of Verizon's PAP compliance filing in New York and Massachusetts, Verizon will make a compliance filing with this Commission. The Commission notes, however, that any modifications to the New York or Massachusetts' PAPs will not automatically be

implemented in Rhode Island. The Commission may conduct hearings on any such modifications or, if appropriate, reject any such modifications. In determining whether to implement any such modifications in the Rhode Island PAP, the Commission will consider whether it is appropriate for the Rhode Island PAP to differ from the New York or Massachusetts PAPs in order to benefit the CLECs of Rhode Island.

D. Modifications to the PAP to Benefit the Rhode Island Market

In structuring the PAP for Rhode Island, the Commission must balance the benefit of uniformity with the creation of unique features that will benefit CLECs in Rhode Island. As a result, it is not sufficient for this Commission simply to adopt the New York model PAP for Rhode Island.

Rather, this Commission found it necessary to depart from the New York model PAP in order to address specific concerns raised by a number of Rhode Island CLECs and certain other problems in the Rhode Island telecommunications market. Rhode Island CLECs, such as Conversent, have experienced extensive billing problems with Verizon. For CLECs to compete successfully in Rhode Island, Verizon needs to provide them with accurate bills and efficient means of resolving billing claims. The Commission also is aware that developing and implementing new metrics can be a difficult and time-consuming process for regulators and Verizon. Accordingly, the Commission adopts for inclusion in the

Rhode Island PAP two new billing metrics recently developed in Pennsylvania: (1) percentage of CLEC billing claims acknowledged within two (2) business days; and (2) percentage of CLEC billing claims resolved within 28 calendar days after acknowledgement. To emphasize the importance of these new billing metrics, the Commission requires them to be placed in a new subsection of Special Provisions in the PAP. The amount of money allocated to the new billing metrics Special Provisions will equal 3 percent of Verizon Rhode Island's yearly net income or approximately \$1.6 million for the year 2000 ARMIS. For the sake of clarity, we note that the remaining provisions of the PAP will place "at risk" a total \$20.375 million or 36% of Verizon's net annual income. Therefore, the new Special Provisions for billing metrics will total \$1.6 million or 3% of net yearly income which, combined with the remaining PAP provisions, will total approximately \$21.9 million or 39% of net yearly income. If Verizon fails either of the two new billing metrics in any given month, Verizon will pay to the affected CLECs 1/12<sup>th</sup> of the total amount allocated to the billing metrics Special Provision. In other words, assuming the annual amount allocated to this provision is \$1.6 million, Verizon would have approximately \$133,333 at risk each month. By placing this amount at risk for billing metrics, the Commission believes Verizon will have an adequate incentive to address the billing problems experienced by Rhode Island CLECs.

Another important Special Provision is UNE Flow Through. Until recently, Verizon has consistently missed this metric, OR-5-03, in New York, Massachusetts and Rhode Island. To ensure that Verizon meets this critical metric, the Commission is hereby doubling the penalty amount allocated to UNE Flow Through from \$695,000 annually to \$1,390,000 annually, which is also equivalent to approximately 3% of Verizon's yearly net income. The additional amount allocated to UNE Flow Through will come from available (i.e., unused) funds allocated to Doubling MOE. However, if the Doubling MOE provision is triggered and payments are made to CLECs under this provision, the UNE-Flow Through provision will not be doubled for that time period.<sup>144</sup> By doubling the penalty amount allocated to UNE-Flow Through, the Commission hopes that Verizon will more consistently meet metric OR 5-0-3.

During the proceedings a proposal was made that Verizon issue checks in lieu of bill credits when making PAP payments to CLECs. Verizon claims that its New York billing system allows PAP bill credits to be clearly identified as well as auditable and verifiable. Unfortunately, Verizon's billing system in New England has not yet been programmed to provide bill credits in the same manner as New York. Accordingly, to assist CLECs in determining whether they have received the appropriate amount of PAP payments, the Commission requires Verizon to issue

---

<sup>144</sup> In all likelihood, the Doubling MOE provision will not be triggered since it has not

checks instead of bill credits for its PAP payments. The Commission recognizes this task may be administratively burdensome. Therefore, once Verizon has updated its New England billing system to conform with New York, Verizon may request the Commission to revisit the issue of bill credits.

WorldCom raised the issue of applying the Individual Rule used in Critical Measures to MOE measures. In reviewing Verizon's PAP metrics performance in recent months, the Commission only found a few instances where Verizon consistently missed certain metrics which, but for the fact they are solely MOE metrics, would have resulted in PAP payments. For example, for the months of June through August 2001, under the Individual Rule, Verizon would have made PAP payments under MOE for two of these three months for its poor performance in UNE and Resale. However, although it missed the DSL metrics in MOE in all three months, Verizon would not have been required to make PAP payments for these poor performance results because the DSL metrics are only included in MOE and thus, are not subject to the Individual Rule for determining whether any PAP penalties are owed. In fact, in all three months in question, Verizon did not meet the following three DSL metrics: (1) PR-6-01 (percentage installation troubles within 30 days—2Wire Digital); (2) MR-2-02 (Network trouble report rate—loop—2Wire Digital); and (3) MR-2-02 (Network trouble report rate-loop-2Wire xDSL).

---

been since the inception of the PAP in New York.

In Docket No. 3363, Verizon questioned whether any of these three DSL metrics has the appropriate retail analogue to compare to the wholesale performance in order to determine if there is parity. The Commission understands Verizon's concerns, but concludes that if these metrics are incorrect, the New York Public Service Commission will properly remedy this situation. In addition, the Commission notes that DSL is a crucial and developing telecommunications market. Accordingly, the Commission will place the three DSL metrics, discussed above, into Critical Measures. The monetary amounts assigned to these three new Critical Measures will be based on the weight given to them in the MOE. The additional monetary amounts assigned to these new Critical Measures will be allocated from the Doubling MOE provision. However, if in any quarter the Doubling MOE provision is triggered, these three DSL metrics will not be considered Critical Measures and need not be funded except through MOE. In regards to WorldCom's request regarding the general adoption of the Individual Rule to MOE, the Commission finds that it is unnecessary at this time and could unduly complicate the New York model PAP.

#### E. Miscellaneous Issues Raised During the Proceedings

There were other concerns and requests made by the parties in this proceeding. Concerns were raised regarding Verizon's statistical methodology, particularly for small sample sizes. The Commission shares these concerns regarding Verizon's statistical methodology, in

particular, for small sample sizes. The Commission notes, however, that the Verizon's statistical methodology is similar to SBC's methodology in Kansas and Oklahoma, which are also states with small sample sizes. Moreover, the Commission did not receive clear and unambiguous recommendations for modifications to Verizon's statistical methodology. The Division's recommendation was to adopt Verizon's statistical methodology because it properly weighs Type I and Type II, as well as properly addresses small sample sizes. In addition, there is the CLEC exception provision in the PAP that allows a CLEC to raise issues relating to a metric with a small sample size. Accordingly, the Commission will accept Verizon's proposed statistical methodology but reserves the right to modify it in the future.

As to Cox's request that MOE be weighted in favor of trunks or facilities-based competition, the Commission notes Verizon's performance in trunking metrics is nearly flawless. Although the Rhode Island market is presently dominated by CLECs utilizing trunks, there is no need to add more weight to metrics in which Verizon has demonstrated no difficulty in satisfying. Conversent's requests and concerns were properly satisfied in during the proceedings or in this Order. Specifically, Conversent's billing problems are not only addressed in the PAP. The hot cut metric in the PAP, PR-9-01, clearly measures hot cuts completed within five days. Furthermore, Conversent's concern regarding the installation of high capacity loops was addressed when

Verizon filed a tariff similar to Massachusetts Tariff No. 17 requiring the installation of 1-9 DS-1 loops within nine days. Also, Conversent's issue as to the provisioning of high capacity loops where there are no facilities available was addressed by Verizon in Docket No. 3363, where Verizon explained that FCC Tariff No. 11 allows a CLEC to switch from a special access rate to a UNE rate for its high capacity loops.

As to the more abstract concerns of certain CLECs, the Commission confirms that the Rhode Island PAP is not an exclusive remedy for CLECs, and that CLECs have ample remedies under Rhode Island tariffs, interconnection agreements and the law. The Commission will not eliminate the internal caps in the PAP or provide a PAP payment for Verizon's delay in implementing new metrics because neither issue has yet arisen or appears likely to arise in the implementation of the PAP. Lastly, the Commission finds there is no apparent need to have PAP payments for Verizon's metric change control process because KPMG has filed a report indicating that Verizon's present metrics change control process is superior and improved since the time of Massachusetts' Section 271 application.

## II. C2C

In reference to the proposed C2C metrics, the Commission adopts them with a few modifications. As discussed above, the Commission is adding the two additional billing metrics adopted in Pennsylvania. In the interest of uniformity, the Commission will generally refrain from

creating or adding metrics for C2C unless they are already adopted in another Verizon state or if there is a specific issue of concern to Rhode Island CLECs. The Commission did not adopt Cox's proposed directory listing metric because it has not been adopted in any other Verizon state and because there have been no complaints made to Verizon in the last twelve months relating to directory listing accuracy. However, the Commission believes that it should be able to review and adopt any metric adopted in Verizon service territory, as well as in the former Bell Atlantic territory before its merger with GTE, because Verizon's OSS systems in the former Bell Atlantic territory are very similar and Rhode Island's CLECs may share the concerns of other CLECs in the northeast. Accordingly, the Commission requires Verizon to file for Commission consideration any new metrics adopted in Verizon's service territory, as well as in the former Bell Atlantic territory before its merger with GTE, within thirty (30) days of the compliance filing with that state Commission. In addition, to assist the Commission in determining whether Verizon is meeting the PAP metrics, the Commission will require Verizon to file with its monthly C2C performance reports a chart, similar to one submitted in Docket No. 3363, indicating whether it has met or failed to meet each PAP metric included in C2C. Lastly, some CLECs discussed the adoption of New York's Special Services Guidelines in the C2C for Rhode Island. The Commission notes that these Special Services Guidelines are not presently included in New York's C2C metrics. Also,

special services is still in its infancy stage in Rhode Island. Accordingly, the Commission will address the adoption of Special Services Guidelines in a separate docket.

Accordingly it is

(16809) ORDERED:

1. The Carrier-to-Carrier Performance Standards and Reports for Rhode Island filed by Verizon on February 16, 2001, is hereby adopted with the following modifications:
  - A. The Pennsylvania billing metrics filed by Verizon on October 9, 2001 will be included;
  - B. Verizon will file with this Commission within 30 days of its compliance filing with any other state Commission located in the Verizon service territory, as well as in the former Bell Atlantic territory (prior to its merger with GTE), any new metrics for this Commission's consideration;
  - C. Verizon will file a monthly chart, similar to that filed in Docket No. 3363, indicating whether it has satisfied or not satisfied each of the PAP metrics; and
  - D. The Commission shall open a docket to investigate and evaluate the need for Special Services Guidelines in Rhode Island.
2. The Commission adopts the Rhode Island Performance Assurance Plan ("PAP") filed by Verizon on June 8, 2001 and

revised by Verizon on August 30, 2001 with the following modifications:

- A. Thirty Nine Percent (39%) of Verizon-Rhode Island's yearly net income will be at risk under the Rhode Island PAP;
- B. Any modifications ordered to the PAPs in New York or Massachusetts will be filed for this Commission's review within 10 days of the compliance filing in New York or Massachusetts;
- C. The Commission reserves the right to select an auditor to perform metric testing and data validation at the expense of Verizon.
- D. The Rhode Island PAP will commence the first day of the month in which Verizon receives Section 271 approval for Rhode Island from the FCC; however, the UNE Flow Through Special Provision will be implemented one full quarter prior to said date;
- E. The Pennsylvania billing metrics filed by Verizon on October 9, 2001 will be incorporated into the Rhode Island PAP as a Special Provision, and an amount of three percent (3%) of Verizon's yearly net income will be assigned to this provision; if Verizon fails either billing metric in any month, one-twelfth of the said three percent (3%) will be paid out to the affected CLECs;

- F. The amount of the UNE Flow Through Special Provision will be doubled whenever the Doubling MOE provision is not triggered;
  - G. Verizon will issue PAP payments to CLECs in the form of checks and not bill credits; and
  - H. The DSL metrics PR-6-01 (percentage installation trouble within 30 days—2Wire Digital), MR-2-02 (network trouble report rate—loop—2Wire Digital), and MR-2-02 (network trouble report rate—loop—2Wire xDSL) will be included in Critical Measures whenever the Doubling MOE provision is not triggered.
- 3. Verizon will make a compliance filing within 30 days of the issuance of this Report and Order.
  - 4. Verizon will act in accordance with all other findings and instructions contained in this Report and Order.

EFFECTIVE AT WARWICK, RHODE ISLAND PURSUANT TO AN  
OPEN MEETING DECISION ON NOVEMBER 15, 2001. WRITTEN

ORDER ISSUED DECEMBER 3, 2001.

PUBLIC UTILITIES COMMISSION

---

Elia Germani, Chairman

---

Kate F. Racine, Commissioner

---

Brenda K. Gaynor, Commissioner